

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	No.
vs.	)	5:19-CV-4063
	)	
SCHUSTER CO,	)	
	)	
Defendant.	)	

The remote videoconference and teleconference Rule 30(b)(6) deposition of CLIFFORD R. HAYMAN, Ph.D., for DCI Consulting, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Layli Phillips, Certified Shorthand Reporter of the State of Illinois, all participants from their individual locations, on October 6, 2020, at 9:03 a.m.

Reported by: Layli Phillips, CSR, RPR, CRR  
License No.: 084.003900

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19 ALSO PRESENT:

20 Mr. Jeff Arens, Schuster

(Via audio conference);

21 Mr. John Clifford, CRT

22 (Via audio conference.)

## I N D E X

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1 THE REPORTER: All parties are aware  
2 that the witness will be sworn in remotely. The  
3 parties agree not to challenge the validity of any  
4 oath administered by the court reporter, even if  
5 the court reporter is not physically present with  
6 the witness and not a notary public in the state  
7 where the witness resides.

8 Here begins the webconference deposition  
9 of Dr. Clifford Haimann in the matter of EEOC vs.  
10 Schuster Company.

11 Today's date is October 6, 2020, and the  
12 time is 9:03 a.m. My name is Layli Phillips of  
13 Thompson Court Reporters.

14 Beginning with the noticing party, will  
15 counsel please introduce themselves, state whom  
16 they represent, and stipulate to the swearing in  
17 of the witness remotely.

18 MR. SHULTZ: Miles Shultz for the EEOC.  
19 Also Elizabeth Banaszak appearing for the EEOC,  
20 and the EEOC stipulates to the remote swearing in.

21 MR. PHILLIPS: Doug Phillips for  
22 defendant. Defendant stipulates.

23 MR. FISHMAN: Burton Fishman for  
24 deponent DCI. Defendant stipulates or third-party

1 stipulates.

2 (Witness sworn.)

3 THE REPORTER: The witness has declared  
4 their testimony during this proceeding is under  
5 penalty of perjury. The parties have stated their  
6 agreement on the record.

7 You may proceed.

8 CLIFFORD R. HAIMANN, Ph.D.,  
9 the deponent herein, called as a  
10 witness, after having been first remotely duly  
11 sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. SHULTZ:

14 Q. Good morning, Dr. Haimann, Haimann.

15 A. Haimann.

16 Q. Haimann. I said it right -- wrong the  
17 first time but right now.

18 We met briefly off the record a moment  
19 ago; but for the record, I'm Miles Shultz, and I  
20 represent the EEOC in a lawsuit that the EEOC has  
21 filed against Schuster Company that's pending in  
22 the Northern District of Iowa.

23 The testimony you're about to give today  
24 will be in that case; do you understand that?

1     what -- what happened is there were -- we made  
2     a -- one report, and then we may have -- but then  
3     we created a second kind of shortened, concise  
4     report for them. It's essentially the same  
5     content, but I think you must have the longer one.

6           Q.     Oh, okay. So Exhibit 2 for Company B,  
7     which you're aware that company B is Schuster, I  
8     take it?

9           A.     Correct, yes.

10          Q.     It it's a little hard to read because it  
11     bleeds onto Page 5 as well.

12          A.     Right, yeah.

13          Q.     So it's going to be tricky. Let's see  
14     if I can do that.

15                   There we go.

16          A.     Yeah. Thanks.

17          Q.     So it looks like, the way I'm reading  
18     this, this is a graph depicting or a table,  
19     two-by-two table, depicting DCI and CRT coding  
20     decisions for relevant and irrelevant injuries; is  
21     that right?

22          A.     Correct.

23          Q.     And if I am tallying this up right, it  
24     looks like DCI has coded 7 relevant injuries and

1                   Do you know what I'm referring to when I  
2 say the "CRT cut score"?

3           A.       The cut score to -- are you -- no. Can  
4 you clarify what you're referring to?

5           Q.       So the -- the CRT test gives this body  
6 index score, are you aware of that, BIS?

7           A.       Yes.

8           Q.       And the BIS is that number that's  
9 correlated to the Department of Labor exertional  
10 classifications; do you remember that?

11          A.       Yes.

12          Q.       Okay. So there is a minimum passing  
13 score, minimum BIS passing score, for these  
14 positions; do you remember that?

15          A.       Yes.

16          Q.       Okay. So that's -- when I say the "CRT  
17 cut score," I'm referring to that minimum passing  
18 score, minimum body index passing score. Okay?

19          A.       Yes.

20          Q.       All right. So do you know if all these  
21 different positions for Company A and Company B  
22 that were included in the study, whether or not  
23 they had the same "CRT cut scores"?

24          A.       I do not know if they used the same "CRT



1 cut scores."

2 Q. Do you remember if that's something that  
3 DCI inquired about?

4 A. I don't remember.

5 Q. In looking at the study -- let me  
6 actually find the section. That will be easier.

7 Actually, I think it's another email.  
8 Hold on a second.

9 All right. I'm going to put an exhibit  
10 in the chat. Burt and Doug, this is DCI471 to  
11 472. I'll share it in a second.

12 (Whereupon Deposition Exhibit  
13 No. 7 was marked for  
14 identification by the court  
15 reporter.)

16 BY MR. SHULTZ:

17 Q. All right. Cliff, are you able to see  
18 my screen?

19 A. Yes.

20 MR. SHULTZ: This is Exhibit --

21 THE REPORTER: 7.

22 MR. SHULTZ: -- 6, is that right, Doug  
23 or Burt? 7.

24 MR. FISHMAN: 7, I think.

1 Q. Let me find another email here.  
 2 Actually, it's DCI391, which is Exhibit 2. Let me  
 3 put that back on my screen.

4 Can you see my screen, Cliff?

5 A. Yes.

6 Q. So this paragraph here above what I have  
 7 in a red box says, "Schuster's data isn't  
 8 significant in terms of... losses"; do you see  
 9 that?

10 A. Yes.

11 Q. So the report, when you're analyzing  
 12 Company A and Schuster's data, the only -- so you  
 13 have, you know, logistic regressions for Company  
 14 A, a bunch of different statistical analyses, and  
 15 due to the low sample size of the Schuster data,  
 16 you're only able to do those Fisher exacts; is  
 17 that right?

18 A. Correct.

19 Q. Is there any concern with including --  
 20 you know, putting together Schuster's data, which  
 21 is pretty minimal, with Company A's data?

22 A. Can you clarify?

23 Q. Is it appropriate to include Schuster's  
 24 data with Company A's data since Schuster's data

1 is as -- is so minimal?

2 A. So the -- I apologize. The word  
3 "appropriate" is a -- it's a broad and loaded  
4 word.

5 Q. How so?

6 A. "Appropriate" statistically versus  
7 "appropriate" from a job analysis standpoint.

8 Q. Yeah. Let's go with both. So, first,  
9 is it "appropriate" statistically?

10 A. So we felt it was, and that's why we  
11 included a control variable, a company control  
12 variable, in the regressions. That was the  
13 methodological factor we used to account for the  
14 fact that the data had been connected.

15 Q. And how about as a -- from the job  
16 analysis perspective?

17 A. What I can say to that is as external  
18 consultants, we -- we do what all external  
19 consultants do, which is we take the data  
20 information that's provided to us and analyze it  
21 to the best of our ability. So we were told that  
22 these are highly similar positions and that we  
23 could look at them together.

24 Q. Okay.

1           A.       That is the nature of being an external  
2 consultant.

3           Q.       Okay. Yeah. And I think that's  
4 consistent with -- I'm not sure if it's in the  
5 report or maybe in that cover letter where it  
6 talks about, you know, this validity study isn't a  
7 transport validity study? Am I using that  
8 terminology correctly? Is it transport,  
9 transportability?

10          A.       So "transportability" would be the word,  
11 yes.

12          Q.       And that has to do with job analysis.

13                 MR. FISHMAN: No.

14 BY MR. SHULTZ:

15          Q.       Is that correct?

16          A.       Sorry. There's a lot of questions here  
17 or there's -- can you be -- can you be more  
18 specific of your --

19                 MR. FISHMAN: Miles, can I also object  
20 to this line of questioning. This is not -- this  
21 is drawing on specialized technical and scientific  
22 expertise regarding specialized language, and it's  
23 beyond the scope of the fact witness 30(b)(6) we  
24 agreed to.